

227982

LAW OFFICES OF
LOUIS E. GITOMER

LOUIS E. GITOMER
LOU_GITOMER@VERIZON.NET

THE ADAMS BUILDING, SUITE 301
600 BALTIMORE AVENUE
TOWSON, MARYLAND 21204-4022
(202) 466-6532
FAX (410) 332-0885

October 14, 2010

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

OCT 14 2010

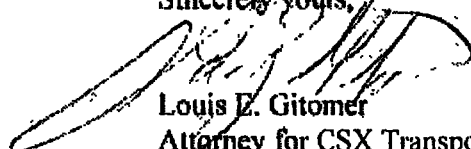
Re: Finance Docket No. 35348, *CSX Transportation, Inc. & Delaware and
Hudson Railway Company, Inc.-Joint Use Agreement*

Part of
Public Record

Dear Ms. Brown:

Enclosed for efilng is the Response of CSX Transportation, Inc. Thank you for
your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosure

CSXT-6

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35348

CSX TRANSPORTATION, INC. & DELAWARE AND
HUDSON RAILWAY COMPANY, INC.-JOINT USE AGREEMENT

RESPONSE OF CSX TRANSPORTATION, INC. TO LETTER OF
OGDENSBURG BRIDGE AND PORT AUTHORITY

Peter J. Shudtz, Esq.
Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250

Counsel for CSX Transportation, Inc.

Dated: October 14, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35348

CSX TRANSPORTATION, INC. & DELAWARE AND
HUDSON RAILWAY COMPANY, INC.—JOINT USE AGREEMENT

RESPONSE OF CSX TRANSPORTATION, INC. TO LETTER OF
OGDENSBURG BRIDGE AND PORT AUTHORITY

CSX Transportation, Inc. (“CSXT”) and the Delaware and Hudson Railway Company, Inc. (“D&H”) agreed on December 1, 2009 to the joint use of the railroad line that they own and operate between New York City, NY and Rouses Point Junction, NY for the purpose of enhancing the efficiency and competitiveness of traffic moving between the eastern United States and Canada.¹ Applicants filed a complete Minor Application with the Surface Transportation Board (the “Board”) on April 27, 2010 seeking approval under 49 U.S.C. § 11323(a)(6) for joint use. The Board accepted the application and established a procedural schedule.²

By Letter filed on September 24, 2010, the Ogdensburg Bridge and Port Authority (“OBPA”), the owner of a railroad line between Ogdensburg and Norwood Junction, NY that is operated by the New York and Ogdensburg Railroad (the “NYOR”) seeks to intervene, to provide information, and to have the Board impose a monitoring condition in this proceeding.

¹ CSXT and D&H will jointly be referred to as “Applicants.”

² *CSX Transportation, Inc. and Delaware and Hudson Railway Company, Inc.—Joint Use Agreement*, STB Finance Docket No. 35348 (STB served May 27, 2010) (the “*Acceptance Decision*”).

CSXT respectfully requests the Board to reject the OBPA Letter, or in the alternative, deny the relief sought.

THE LETTER SHOULD BE REJECTED

The *Acceptance Decision* at 1 stated that “Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than **June 7, 2010**, a notice of intent to participate.” OBPA did not file a notice of intent to participate. The *Acceptance Decision* then stated that “All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application ... must be filed by **July 2, 2010**.” Again, OBPA did not file. The evidentiary phase of this proceeding was required by statute to be completed by September 9, 2010 (105 days after the date of publication of the notice in the Federal Register, which occurred on May 27, 2010). See 49 U.S.C. §11325(d)(2). OBPA did not file within the statutory period for presenting evidence in this proceeding. Instead, on September 24, 2010, OBPA filed the Letter pursuant to 49 C.F.R. 1117.1.³

In the Letter at 3, OBPA recognizes “that the date for submitting evidence on the merits has passed and it does not desire to cause any unnecessary delays in this proceeding by setting forth reasons why it has not filed before now and seeking leave to become a party at this time.” Despite the disclaimer, OBPA then offers the excuse for its late filing that it is “a small organization without experienced STB transportation professionals.”

Attached as Exhibit A is an article dated June 26, 2010 from the Daily Courier-Observer

³ Under the Board’s rules, 49 C.F.R. Part 1180 governs consolidation transactions. See 49 C.F.R. 1180.1(a) “The regulations in this subpart set out the ... procedures to be followed in ... any other consolidation proceeding...” Section 1117.1 cited by OBPA does not apply to this proceeding.

concerning the Application. The article includes quotes from Mr. Wade A. Davis, identified as the executive director of OBPA. One quote states that OBPA "will continue to monitor the situation and will respond accordingly." Based on this article, it is clear that OBPA was aware of the proceeding pending at the Board.

CSXT contends that OBPA has not only failed to comply with the Board's schedule, but that it has also failed to respond accordingly, as it publicly stated it would. CSXT urges the Board to reject the Letter. The Letter was filed outside the schedule established by the Board and outside the statutory period for the Board to develop an evidentiary record as required by statute.

IN THE ALTERNATIVE, THE RELIEF SOUGHT BY OBPA SHOULD BE DENIED

OBPA contends that CSXT service over the line between Syracuse and Fort Covington, NY (the "Massena Line") will be reduced and that OBPA will suffer deterioration in the value of its Port facilities. The only apparent rationale for OBPA's conclusion is that it anticipates reduced service will result in making it more difficult to unload latex for transloading to trucks in cold weather.

OBPA's Letter is devoid of any evidence of competitive harm. NYOR, the operator of the OBPA property has not filed a statement. Indeed, NYOR appears to accept CSXT's assurances "that there will be no degradation in service." Quote of Jerome M. Hebda on page 2 of Exhibit A.

The only potential harm cited by OBPA is to latex when the temperature drops below freezing. However, OBPA does not indicate how many car loads of latex, if any, move when the temperature is below freezing, whether the latex freezes on CSXT lines, on OBPA lines, or

elsewhere, and how that will change as a result of the transaction.

The traffic moving over the OBPA is competitive. OBPA itself indicates that the traffic is transloaded for truck movement to Canada. Although OBPA prefers to use Ogdensburg, NY for transloading, there are alternative locations available, not to mention the delivery of goods by rail to Canada.

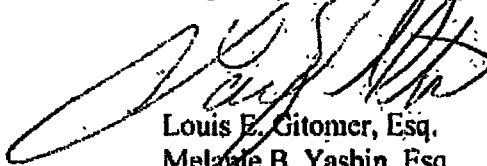
OBPA contends that it will receive less frequent service. Had OBPA been diligent, it would have reviewed the verified statement of Steven A. Potter ("Potter VS") that was attached to the Response of CSXT and D&H filed on July 23, 2010. In addressing the request for a monitoring condition over the Massena Line from the New York State Department of Transportation, Mr. Potter stated CSXT's objection to the proposed monitoring condition. Mr. Potter reiterated that CSXT will add two to three local trains in each direction per week in addition to the number of other trains running on the Massena Line (Potter VS at 6). Mr. Potter states that "local service on the Massena Line will not be reduced to two to three days per week" and that "CSXT will continue to serve all customers as it does today." *Id.*

Based on the lack of evidence of competitive harm produced by OBPA and CSXT's commitment to continue to provide a comparable level of service, CSXT respectfully requests the Board to deny the monitoring condition sought by OBPA.

CONCLUSION

OBPA has not justified the late filing of the Letter. CSXT respectfully requests the Board to reject the Letter. In the alternative, OBPA has not justified the imposition of a monitoring condition and CSXT Respectfully requests the Board to deny the requested condition.

Respectfully submitted,



Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250

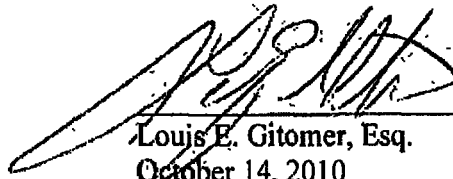
Peter J. Shudtz, Esq.
Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Counsel for CSX Transportation, Inc.

Dated: October 14, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served electronically or by first class mail, postage pre-paid on the parties of record to this proceeding.



Louis E. Gitomer, Esq.
October 14, 2010


EXHIBIT A-NEWSPAPER ARTICLE

Daily Courier-Observer

Member of the Northern New York News

Serving the communities of Potsdam and Massena, New York

HOME NEWS SPORTS OBITUARIES CLASSIFIEDS EVENTS ARCHIVE CONTACT

7-DAY STORY SEARCH:  NEWS FEEDS

CSX Wants To Reduce Local Rail Service

By **BRIAN KELLY**

SATURDAY, JUNE 26, 2010

MASSENA - **CSX** Transportation Inc. wants to reduce its daily rail service through the North Country to two or three days a week.

ARTICLE OPTIONS

   
 SHARE    

North country economic development specialists said they fear that the plan, if approved, would affect users along the so-called Massena Line, which runs from Syracuse to Huntingdon, Quebec. It also would eliminate 14 CSX jobs along the run.

"This is an extremely important issue for Northern New York, because many of our businesses depend on rail," said Wade A. Davis, executive director of the Ogdensburg Bridge and Port Authority. "It would be understating the matter to say it's of significant concern."

Donald C. Alexander, chief executive officer of the Jefferson County Industrial Development Agency, said businesses and industries looking to locate in the area frequently ask about the availability of rail service and he is concerned about any potential reduction in the services available.

Patrick J. Kelly, deputy chief executive officer of the St. Lawrence County Industrial Development Agency, said there already is a perception that the

county is "hard to get to" because it lacks a four-lane highway running through it, and reducing rail service could increase that perception for companies.

"There's a limited number of ways to bring product into and out of Northern New York, and reducing the operational capacity of one of the primary modes of infrastructure is not going to be helpful," he said.

Mr. Davis said his agency "will continue to monitor the situation and will respond accordingly."

"Where freight flows, prosperity follows," he said. "Reduced rail service results in economic penalties."

If the plan is approved, CSX indicates it will run a "shuttle" train between Syracuse and Massena "on a two to three days per week basis." The company said it will "continue to provide service to all shippers located on the Massena Line," and local trains that serve customers along the line will continue to operate as they do now.

Jerome M. Hebda, vice president of Vermont Rail System, which operates the OBPA-owned New York and Ogdensburg Railway between Ogdensburg and Norfolk, said he has been told by CSX that local service should not be affected by the proposed change.

"We've been assured by CSX that there will be no degradation in service," he said.

In its application, CSX also says there will be no change in rail service to Fort Drum. Julie A. Cupernall, a spokeswoman for the base, said Fort Drum's Department of Logistics confirmed that the change would have "no impact" on military operations.

CSX and Delaware & Hudson Railway Co., a subsidiary of Canadian Pacific, have applied to the federal Surface Transportation Board for regulatory approval of a joint-use agreement for rail lines that run between New York City and Rouses Point, at the international border with Canada.

CSX operates a north-south rail between Manhattan and Albany. Delaware & Hudson operates a line between Albany and Rouses Point. Sharing the lines would save fuel and time, according to the application.

CSX also operates a line from Selkirk, near Albany, to Syracuse, where it meets up with the Massena Line. From Syracuse, the line passes through Watertown, Fort Drum and Massena, ending at Huntingdon, where a line operated by Canadian National Railway Co. connects with Montreal, about 33 miles away.

For CSX, moving trains along the line from Albany to the Canadian border, rather than along the Massena Line, would reduce its one-way transit miles between Selkirk and Montreal by 35 percent, from 403 miles to 261 miles. It also would reduce over-the-road transit times by 45 percent, from about 29 hours to about 16 hours. The company estimates the switch will save it about \$280,000 annually.

According to the application, local freight is shuttled on a daily basis between Syracuse and Massena in the same trains that handle "overhead traffic for interchange," or through-traffic that is meeting up with the CN line in Quebec. Other movements to or from customer facilities are handled by CSX local trains.

With the reduction in traffic on the Massena Line, CSX projects it will abolish 14 jobs if the plan is approved. According to the plan, three engineers and three conductors will be eliminated between Syracuse and Watertown; three of each position will be eliminated between Syracuse and Massena, and an engineer and conductor position will be eliminated between Massena and Huntingdon.

The Subsurface Transportation Board is scheduled to make a decision on CSX's and Delaware & Hudson's shared use application Oct. 22. If approved, the agreement would become effective Nov. 21.

Da
IT